

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

*The Committee on Revolutionary Claims, to whom was referred the petition of Lucretia Bell, heir of Jane Van Deen, widow of Abram Van Buskirk, praying a pension, having had the same under consideration, beg leave to submit the following report:*

The petitioner in this case states that she is the child and only heir of Abram Van Buskirk, who was a soldier in the war of the revolution. That the said Abram died in the year 1805, leaving a widow, Jane, who survived him, and died on the 3d of January, 1838; also, that she applied in her lifetime to the Commissioner of Pensions, but died before the completion of the evidence, as stated in the petition; but this does not appear, from the papers received from the Pension Office, to have been done. The only application made to the Commissioner of Pensions seemed to have been by Thomas Van Buskirk, in the year 1851—the son, as he alleges, of the said Abram Van Buskirk, and with his sister, Lucretia, the heirs of his father, the said Abram. The prayer of the petitioner is, that she may be allowed the pension to which her mother would have been entitled under the act of the 4th of July, 1836.

The widow of the deceased soldier died before the passage of the act of July 7, 1838. If she was entitled at all, it must have been under the act of the 4th of July, 1836, which gives a pension to the widows of all soldiers who, if living, would be entitled to a pension under the act of June 7, 1832, who were married before the termination of the last period of the service of the husband. To establish a right to a pension under this act, two things are necessary: 1st. That the husband served six months, at least; and 2d. That the marriage took place during the service. There is, perhaps, satisfactory proof that the marriage took place on the 29th of November, 1778; of the service, the evidence is not satisfactory. There is no evidence of any service, except the affidavits of two very old men, who say that he was pressed into the service in 1776 and 1777, and served during these years, and in 1778—two years and nine months in all; but whether he served after his marriage is entirely uncertain. For this deficiency

of proof, the Commissioner of Pensions refused the application. At the date of this rejection, under some former interpretation of the pension laws, it was held, that if a widow who was entitled died without receiving the pension to which she was entitled, her children could receive it upon establishing her claim. Under this decision, the children of Mrs. Van Buskirk, if they could have furnished the requisite proofs, would have been entitled to receive her pension from the date of the act to the time of her death. But it is understood that the present Attorney General has given a different construction to the pension law, and the rule of the department now is, that a pension is a gratuity to the pensioner, and not an inheritable estate, transmissible to the heirs at law of the deceased.

In this construction your committee concur; and, therefore, even if the proof of the service of Abram Van Buskirk was entirely satisfactory, the petitioner would be entitled to no relief. But she alleges that her mother made application, but died before she was able to perfect her proof. In relation to this, it is sufficient to say that, independent of the insufficiency of the evidence of service, there is no proof of any such application. The papers from the Pension Office afford no such evidence. The committee, therefore, recommend that the prayer of the petitioner be refused.